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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110321211-1289-02]

RIN 0648-BA94

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Gag Grouper Closure
Measures

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures extended.

SUMMARY: NMFS issues this temporary rule to extend the
effective date of interim measures to reduce overfishing of gag
in the Gulf of Mexico (Gulf) implemented by a temporary rule
published by NMFS on June 2, 2011. This temporary rule extends
the interim measures implemented to reduce overfishing of gag in
the Gulf by reducing the commercial quota for gag and, thus, the
combined commercial quota for shallow-water grouper species
(SWG), establishing a 2-month recreational season for gag, and
suspending red grouper multi-use allocation in the Gulf grouper
and tilefish individual fishing quota (IFQ) program, as
recommended by the Gulf of Mexico Fishery Management Council

(Council). The intended effect of this rule is to reduce overfishing of the gag resource in the Gulf.

DATES: The effective date for the temporary rule published at 76 FR 31874, June 2, 2011, is extended from November 30, 2011, to June 2, 2012, unless NMFS publishes a superseding document in the Federal Register or until suspended by another final rule.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA), a regulatory impact review, and an environmental assessment (EA) may be obtained from the Southeast Regional Office Web site at:

<http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727-824-5305, or e-mail: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 2, 2011, NMFS published the final temporary rule (76 FR 31874) to implement measures to reduce the commercial quota for gag from 1.49 million lb (0.68 million kg) to 430,000

lb (195,045 kg), reduce the commercial SWG quota from 6.22 million lb (2.82 million kg) to 5.16 million lb (2.34 million kg), suspend red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program, and implement a recreational fishing season for gag from September 16 through November 15, with a 2-fish daily bag limit. This temporary rule extends these measures for an additional 186 days, unless this rule is superseded by subsequent rulemaking. The purpose of the interim measures and this extension of the rule is to reduce the overfishing of the gag resource in the Gulf while long-term management measures are developed and implemented through Amendment 32 to the FMP, approved by the Council at its August 2011 meeting. Amendment 32 will include management measures to end overfishing of gag, allow the gag stock to rebuild, and co-manage gag and red grouper by implementing concurrent management measures. The proposed rule for Amendment 32 published on November 2, 2011 (76 FR 67656) and requested public comment. Section 305(c)(2) of the Magnuson-Stevens Act provides the Council the authority to request interim measures, if necessary, to reduce overfishing. The Council, at its October 2011 meeting concurred with extending the interim measures currently in place. Section 305(c)(3)(B) of the Magnuson-Stevens Act allows for interim measures to be extended for one additional period of

186 days provided that the public has had an opportunity to comment on the interim measures and that the Council is actively preparing a plan amendment to address the overfishing on a permanent basis. A proposed temporary rule, published on April 21, 2011 (76 FR 22345), requested public comments on these same interim measures. NMFS responded to these comments in the final temporary rule published on June 2, 2011 (76 FR 31874), and they are not repeated here.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined that the interim measures this temporary rule extends are necessary for the conservation and management of the Gulf gag stock, until more permanent measures are implemented, and is consistent with the Magnuson-Stevens Act and other applicable laws. The Council has developed and submitted Amendment 32 to establish long-term measures to end the overfishing of Gulf gag and rebuild the stock. Amendment 32 and its associated regulations are still being implemented and are not expected to become effective until sometime in early 2012.

This temporary rule has been determined to be not significant for purposes of E.O. 12866.

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and comment.

An EA was prepared for the interim measures contained in the June 2, 2011, temporary rule (76 FR 31874). Because the conditions that existed at the time the June 2, 2011, temporary rule was implemented have not changed, the impacts of continuing the interim measures through this extension have already been considered. Copies of the EA are available from NMFS (see ADDRESSES).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553 (b)(B) to waive prior notice and opportunity for public comment on this temporary rule extension. Providing prior notice and opportunity for public comment would be contrary to the public interest. This rule would continue interim measures implemented by the June 2, 2011, temporary rule, for not more than an additional 186 days beyond the current expiration date of November 29, 2011. The conditions prompting the initial temporary rule still remain, and more permanent measures to be completed through Amendment 32 have not yet been finalized. Failure to extend these interim measures, while NOAA finalizes the more permanent measures in Amendment 32, would result in additional overfishing of the Gulf gag

stock, which is contrary to the public interest and in violation of National Standard 1 of the Magnuson-Stevens Act.

For the aforementioned reasons, the AA also finds good cause under 5 U.S.C. 553 (d)(3) to waive the 30-day delay in effectiveness of this rule.

Authority: 16 U.S.C. 1801 et seq.

Dated: November 3, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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